



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

May 2, 2005

Ms. Carol Longoria
The University of Texas System
201 West Seventh Street
Austin, Texas 78701-2902

OR2005-03754

Dear Ms. Longoria:

You ask whether certain information is subject to required public disclosure under the Public Information Act (the "Act"), chapter 552 of the Government Code. Your request was assigned ID# 223120.

The University of Texas Southwestern at Dallas (the "university") received a request for four categories of information related to the university's acquisition of St. Paul Medical Center and Zale Lipshy Medical Center. You state that the university does not possess information responsive to item number three of the request, which seeks copies of any judgement, settlement or other agreement pertaining to a specified lawsuit.¹ You also state and provide documentation showing that the university sought clarification of a portion of the request, and you have submitted a copy of the requestor's written response. See Gov't Code § 552.222 (providing that a governmental body may ask the requestor to clarify the request if what information is requested is unclear to the governmental body); see also Open Records Decision No. 663 at 5 (1999)(discussing requests for clarification). You argue that the Act is not applicable to a portion of the requested information. In the alternative, you claim that all of the requested information is excepted from disclosure under section 552.103 of the

¹The Act does not ordinarily require a governmental body to obtain information not in its possession or to prepare new information in response to a request. See *Economic Opportunities Dev. Corp. v. Bustamante*, Decision Nos. 605 at 2 (1992), 558 (1990), 499 (1988), 452 at 3 (1986), 362 at 2 (1983).

Government Code. We have considered your arguments and the exception you claim and reviewed the submitted representative sample of the responsive information.²

Initially, we address your contention that the Act is not applicable to information that is responsive to item number 2 of the request. The Act is applicable to "public information." See Gov't Code § 552.021. "Public information" is defined as information that is collected, assembled, or maintained under a law or ordinance or in connection with the transaction of official business:

(1) by a governmental body; or

(2) for a governmental body and the governmental body owns the information or has a right of access to it.

Id. § 552.002(a). Thus, virtually all information that is in the physical possession of a governmental body is public information that is encompassed by the Act. *Id.* § 552.022(a)(1); see also Open Records Decision Nos. 549 at 4 (1990), 514 at 1-2 (1988). We note that the information at issue consists of a valuation analysis of St. Paul University Hospital. You assert that this valuation analysis is not subject to the Act because the university acquired only the assets of St. Paul Medical Center, and that a separate, non-profit corporation retained all debts and claims against St. Paul Medical Center. You advise, however, that the university entered into a management services agreement to supply administrative assistance in settling the outstanding debts and claims against the private medical center, and that the university retains an interest in any of the proceeds of the sale of the assets to the university that are not expended by the medical center in settling the outstanding debts. We further note that the valuation analysis cover letter states that it was conducted pursuant to the authorization of the university and another private entity. Our review of the submitted valuation analysis also indicates that St. Paul Medical Center's liabilities affected the fair market value of the assets that the university purchased. We therefore determine the submitted information is held by the university "in connection with the transaction of official business." Gov't Code § 552.002(a). Thus, the submitted information at issue is subject to the Act and must be released, unless an exception to disclosure is shown to be applicable. Accordingly, we will address the applicability of section 552.103 to this information and to the remaining submitted information.

Next, we must address the university's obligations under the Act. Pursuant to section 552.301(b), a governmental body must ask for a decision from this office and state

²We assume that the "representative sample" of records submitted to this office is truly representative of the requested records as a whole. See Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent that those records contain substantially different types of information than that submitted to this office.

the exceptions that apply not later than the tenth business day after the date of receiving the written request. Additionally, pursuant to section 552.301(e), a governmental body is required to submit to this office within fifteen business days of receiving an open records request (1) general written comments stating the reasons why the stated exceptions apply that would allow the information to be withheld, (2) a copy of the written request for information, (3) a signed statement or sufficient evidence showing the date the governmental body received the written request, and (4) a copy of the specific information requested or representative samples, labeled to indicate which exceptions apply to which parts of the documents.

The university informs us that it received the request for information on February 2, 2005, and it requested a clarification of item numbers 1 and 2 of the request on February 10, 2005. *See* Gov't Code § 552.222 (providing that if request for information is unclear, governmental body may ask requestor to clarify request); *see also* Open Records Decision No. 31 (1974) (when presented with broad requests for information rather than for specific records, governmental body may advise requestor of types of information available so that request may be properly narrowed). Thus, the ten business day time period to request a decision from us under section 552.301(b) with regard to item numbers 1 and 2 was tolled on the date that the university sought clarification of the request from the requestor. *See* Gov't Code § 552.301(b); *see also* Open Records Decision No. 663 at 5 (1999) (providing that ten-day period is tolled during the clarification process). We note, however, that although section 552.222 tolls the deadlines for seeking a ruling from this office with regard to that portion of a request for which clarification is sought, section 552.222 does not relieve the university of its obligation to timely request a decision from the office in compliance with section 552.301 with regard to those portions of the request for which it does not seek clarification. Gov't Code § 552.222. Accordingly, the deadline for submitting a request for decision regarding the information for which the university did not seek clarification was February 16, 2005.

Because the university failed to comply with the procedural requirements of section 552.301 regarding item number 4 of the request, this information is now presumed public. *See* Gov't Code § 552.302; *see also* *Hancock v. State Bd. of Ins.*, 797 S.W.2d 379 (Tex. App.—Austin 1990, no writ); *City of Houston v. Houston Chronicle Publ'g Co.*, 673 S.W.2d 316, 323 (Tex. App.—Houston [1st Dist.] 1984, no writ); Open Records Decision No. 319 (1982). The university must demonstrate a compelling interest in order to overcome the presumption that the information at issue is now public. *See id.* Normally, a compelling interest is demonstrated when some other source of law makes the information at issue confidential or third-party interests are at stake. *See* Open Records Decision No. 150 at 2 (1977). Section 552.103 of the Government Code is discretionary in nature; it serves only to protect a governmental body's interests and may be waived. As such, it does not constitute a compelling reason to withhold information. *See Dallas Area Rapid Transit v. Dallas Morning News*, 4 S.W.3d 469, 475-76 (Tex. App.—Dallas 1999, no pet.) (governmental body may waive section 552.103); *see also* Open Records Decision No. 522

(1989) (discretionary exceptions in general). Therefore, the university may not withhold the submitted information that is responsive to item number 4 of the request from release under section 552.103. As you make no other arguments against disclosure for this information, it must be released to the requestor.

We next note that the information that is responsive to item numbers 1 and 2 of the request, which you have labeled as Tabs 7 and 8, is subject to required public disclosure under section 552.022 of the Government Code. Section 552.022 provides in relevant part:

(a) Without limiting the amount or kind of information that is public information under this chapter, the following categories of information are public information and not excepted from required disclosure under this chapter unless they are expressly confidential under other law:

(1) a completed report, audit, evaluation, or investigation made of, for or by the governmental body, except as provided by Section 552.108;

...

(3) information in an account, voucher, or contract relating to the receipt or expenditure of public or other funds by a governmental body[.]

Gov't Code §552.022(a)(1), (3). Tabs 7 and 8 consist of completed reports and information in contracts relating to the expenditure of funds by a governmental body. Thus, pursuant to section 552.022(a)(1) and (3), the university may only withhold the information if it is confidential under other law. As previously noted, section 552.103 of the Government Code is a discretionary exception to disclosure. As such, it is not other law that makes information expressly confidential for purposes of section 552.022. *See Dallas Area Rapid Transit v. Dallas Morning News*, 4 S.W.3d 469 (Tex. App.—Dallas 1999, no pet.) (governmental body may waive section 552.103). Consequently, the university may not withhold the information in Tabs 7 and 8 under section 552.103 of the Government Code. As you make no other arguments against disclosure for this information, it must be released to the requestor.

Lastly, we note that some of the submitted information is protected by copyright. A custodian of public records must comply with the copyright law and is not required to furnish copies of records that are copyrighted. Attorney General Opinion JM-672 (1987). A governmental body must allow inspection of copyrighted materials unless an exception applies to the information. *Id.* If a member of the public wishes to make copies of copyrighted materials, the person must do so unassisted by the governmental body. In making copies, the member of the public assumes the duty of compliance with the copyright law and the risk of a copyright infringement suit. *See Open Records Decision No. 550* (1990).

In summary, the university must release the submitted information to the requestor. In doing so, however, the information must be released in accordance with applicable copyright laws for any information protected by copyright.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, upon receiving this ruling, the governmental body will either release the public records promptly pursuant to section 552.221(a) of the Government Code or file a lawsuit challenging this ruling pursuant to section 552.324 of the Government Code. If the governmental body fails to do one of these things, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at (877) 673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

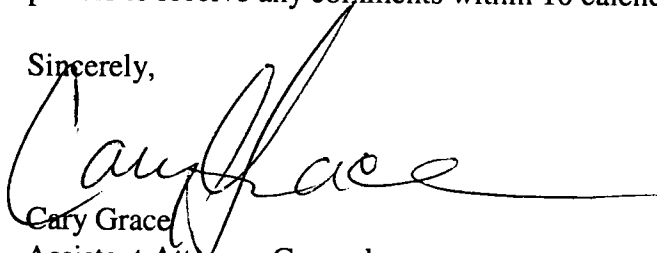
If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Tex. Dep't of Pub. Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the Texas Building and Procurement Commission at (512) 475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. We note that a third party may challenge this ruling by filing suit seeking to withhold information from a requestor. Gov't Code

§ 552.325. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,



Cary Grace
Assistant Attorney General
Open Records Division

ECG/jev

Ref: ID# 223120

Enc. Submitted documents

c: Mr. Gary B. Stephens
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(w/o enclosures)